IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/12/2004

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE N.V.BALASUBRAMANIAN

W.P.No.33528 of 2004
and W.P.No.34436 of 2004
and
W.P.M.P.Nos.40521 and 41570 of 2004

W.P.No.33528 of 2004

O.Fernandes,
Co-Convener,
Coastal Action Network,
No.10, Thomas Nagar,
Little Mount, Saidapet,
Chennai - 600 015. ..Petitioner.

-Vs-

1.Tamil Nadu Pollution Control Board,
rep. by its Chairman,
Anna Salai, Chennai - 32.

2. Union of India,
rep. by Ministry of Environment & Forests,
through its Secretary,
Paryavaran Bhavan,
CGO Complex, Lodi Road,
New Delhi - 110 003.

3. Tuticorin Port Trust,
rep. by its Chairman,
Tuticorin - 628 004.

4. District Collector,
Ramanathapuram District,
Ramanathapuram.

5. District Collector,
Tuticorin District, Tuticorin.

6. District Collector,
Thanjavur District,

Thanjavur.

7. District Collector,
Thiruvarur District,
Thiruvarur.

8. District Collector,
Pudukottai District,
Pudukottai.

9. District Collector,
Nagapattinam District,
Nagapattinam.

10.Government of Tamil Nadu,
rep. by its Secretary,
Department of Revenue,
Fort St.George,
Chennai - 600 009.

11.The Secretary,
representing Ministry of Surface & Transports,
Transport Bhavan, 1 Sansad Marg,
New Delhi - 110 001.

12. Mr.T.R.Balu,
Minister for Surface & Transports,
Transport Bhavan, 1 Sansad Marg,
New Delhi - 110 001.

13. The Director,
National Environmental Engineering Research Institute (NEERI),
Nehru Marg, Nagpur - 440 020.

W.P.No.34436 of 2004

Tuticorin Port Trust,
Rep. by its Chairman,
Tuticorin - 628 004. ..Petitioner.

Vs.

1.Tamil Nadu Pollution Control Board,
rep. by its Chairman,
Anna Salai, Chennai - 32.

2. District Collector,
Tuticorin District,

Tuticorin.

3. District Collector,
Thanjavur District,
Thanjavur.

4. District Collector,
Thiruvarur District,
Thiruvarur.

5. District Collector,
Pudukottai District,
Pudukottai.

6. District Collector,
Nagapattinam District,
Nagapattinam. ..Respondents.

PRAYER: Petitions filed under Article 226 of the Constitution of India for the issuance of writ of mandamus, as stated therein.

Mr.V.Prakash, Senior Counsel : For Petitioner in W.P.33528/04
For Mr.P.Chandrasekaran.

Mr.V.T.Gopalan, Addl. Solicitor General : For Petitioner in W.P.34436/04
For Mr.P.Wilson, S.C.G.S.C. & for respondents 2,11 & 12 in W.P.33528/04

^Mr.R.Gandhi, Senior Counsel : For R3 in W.P.33528/04
For Mr.G.Damodharan

Mr.N.R.Chandran, Advocate General : For R1 in both the W.Ps.
For Mrs.Rita Chandrasekaran

Mr.A.L.Somayaji, Addl.Advocate General : For R4 to R10 in W.P.3 3528/04
For Mr.V.Raghupathy, Government Pleader & R2 to R6 in W.P.34436/04

:O R D E R

THE HON'BLE THE CHIEF JUSTICE

Heard learned counsel for the parties.
2. Writ Petition No.33528 of 2004 has been filed for a direction to declare the public hearings conducted in connection with the Sethu Samudram Shipping Canal Project (hereinafter referred to as SSSCP) in Tuticorin, Thanjavur, Thiruvarur, Nagapattinam, Pudukkottai and Ramanathapuram districts on several dates to be ineffective and not in compliance with the requirements of law.
The petitioner has stated that such public hearings would become meaningful only after a comprehensive Environmental Impact Assessment Report on the SSSCP

is made ready. The petitioner further prayed for a direction against respondents 1 and 2 to constitute panels in accordance with the notification issued by the Central Government on 27.1.1994 as amended on 10.4.1997, and for a further direction to regulate all public hearings to ensure presentation of rational and scientific data.

2. The petitioner claims that he is the co-convener of a group of organisations coming together under the banner of Coastal Action Network. He further claims that the objective of the said network is to ensure protection of environment and bio-diversity in the coastal areas. The SSSCP visualizes making a canal for passage of ships through the Palk Strait, and as per the proposal the total length of the canal would be about 260 Kms. The Government of India is proposing to dredge a width of 300 Metres through 44 Nautical Miles stretch. It is estimated that 32.5 Million Cubic Meter of sand would be dredged in Adams Bridge and 52 Million Cubic Meters in Palk Strait. The Government's proposal is aimed at reducing the distance for ships, which now go around Sri Lanka after berthing in Colombo to reach the Bay of Bengal. It is proposed to dredge a shipping canal in the Palk Strait to avoid going around Sri Lanka.

3. The Government of India issued notification on 27.01.1994 under Rule 5(3)(a) of the Environment (Protection) Rules, 1986, which was framed under the Environment Protection Act, 1986. By the said notification objections were invited from the public within 60 days from the date of notification. This notification was amended on 10.4.1997, by which, environmental clearance by the Central Government was made compulsory.

4. It is stated by the petitioner that the initial Environmental Impact Assessment was done by the National Environmental Engineering Research Institute (hereinafter referred to as NEERI). It is alleged that the report submitted by the NEERI is not a comprehensive environmental impact assessment report, but it is a Rapid Environment Impact Assessment Report. NEERI made that Rapid Environmental Impact Assessment in May 2004 to the Nodal Agency namely Tuticorin Port Trust. The detailed project report has to be submitted by the Larsen and Tubro of India and Rampaul of Denmark, who are the contractors for the SSSCP. Techno Economic Feasibility Report was expected by July 2004.

5. It is recited in paragraph -12 of the petitioner's affidavit that the original pubic hearing for the SSSCP was held on 08.09.2004 at the respondent District Collectorates. The panel which gave the public hearing in each district on various dates is mentioned in paragraph-12 of the affidavit. In paragraph - 13 of the affidavit it is alleged that the public hearing held on 14.09.2004 at Tuticorin was unruly and so also the one which was held at

Pudukottai. It is alleged that the panel constituted was not in accordance with the notification. Various political parties created pandemonium when views opposed to their professed political interests were being voiced.

6. In paragraph - 14 of his affidavit, the petitioner has given

details about the alleged damage to the environment which would be caused by the said project. In paragraph - 16, it is alleged that the present public hearing is not meaningful and does not give effective participation to the citizens and various environment protection groups. The public hearings have become by and large a shouting match of different political groups without systematic presentation of views. In paragraph - 17 it is alleged that the present panelists do not have the necessary qualification or experience.

7. Several counter affidavits have been filed by several respondents in this case, and we have perused the same. The hearings by the Hearing Committees in the six coastal districts of Tamil Nadu are being conducted pursuant to the Environment Impact Assessment Notification dated 27.1.1994 issued by the Central Government in exercise of the powers conferred under Sub-section (1) and Clause (v) of Sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 read with Clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986.

8. Section 3(1) and 3(2) (v) of the Environment (Protection) Act, 198 6 runs as follows:

"3.Power of Central Government to take measures to protect and improve environment. (1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality to the provisions of sub-section(1), such measures may include measures with respect to all or any of the following matters, namely :-

(i) ----------

(ii) ----------

(iii) ----------

(iv) ----------

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;"

9. Rule 5 (3) of the Environment (Protection) Rules, 1986 states that

"(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the carrying on of processes and operation in an area, it may by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.

(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the location of the industries and carrying on of processes or operations in that area.

(c) Any person interested in filing an objection against the

imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.
(d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette consider all the objections received against such notification and may (three hundred and sixty five days - inserted by G.S.R. 884(E) dt. 20.11.1992) impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area."

10. Under the notification dated 27.01.1994, any person who desires to undertake any new project in any part of India or the expansion or modernisation of any existing industry or project listed in the Schedule-I shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi. The application shall be made in the proforma specified in Schedule-II of the notification and shall be accompanied by a project report which shall, inter alia, include an Environmental Impact Assessment Report, Environment Management Plan and details of public hearing as specified in Schedule-IV, prepared in accordance with the guidelines issued by the Central Government in the Ministry of Environment and Forests from time to time. Schedule-IV under the notification gives the procedure for public hearing and Clause (5) of the same states that the public hearing shall be completed within a period of 60 days from the date of receipt of complete documents as required.
11. The reports submitted with the application shall be evaluated and assessed by the Impact Assessment Agency, and if deemed necessary it may consult a Committee of Experts, having a composition as specified in Schedule - III of the notification. The Impact Assessment Agency would be the Union Ministry of Environment and Forests. The Committee of Experts mentioned above shall be constituted by the Impact Assessment Agency or such other body under the Central Government authorised by the Impact Assessment Agency in this regard. Then, the Impact Assessment Agency would prepare a set of recommendations based on technical assessment of documents and data, furnished by the project authorities, supplemented by the data collected during visits to sites, if undertaken, and details of the public hearing. The assessment has to be completed within a period of 90 days from the date of receipt of the requisite documents and data from the project authorities and completion of public hearing and decision conveyed within 30 days thereafter. The project authorities have to submit a half yearly report to the Impact Assessment Agency to enable it to monitor effectively the implementation of the recommendations and the conditions imposed for the environmental clearance.

12. A reading of the aforesaid notification dated 27.01.1994 including Schedule I and IV of the same, makes it clear that a duty is cast on the person who applies for environmental clearance, which in this case happens to be the Tuticorin Port Trust which is appointed as nodal agency for executing the SSSCP, to provide the requisite materials/documents to the 1st respondent viz., Tamil Nadu Pollution Control Board. The 1st respondent on being satisfied called for public hearings and conducted the same in the six coastal districts on various dates. The said notices were also published in

English and Tamil dailies on 07.08.2004.

13. In our opinion, this writ petition is premature, and is liable to be dismissed on this ground alone. The public hearings were going on when this writ petition was filed, and no adverse orders have yet been passed against anyone. A cause of action arises only when an adverse order has been passed or some action adversely affecting someone' s rights is taken. Since, no adverse orders have been passed nor action taken against anyone as yet, we fail to understand how this writ petition can be entertained at this stage. It seems to us that the petitioner has rushed to this Court to block a project which is in the national interest.

14. It is evident that Sethu Samudhram Ship Canal Project would be of great benefit to the country, because at present ships have to go around Sri Lanka to reach the Bay of Bengal. By dredging a Ship Canal in the Palk Strait huge amount of expense and a lot of time would be saved. The distance, time and money on fuel, which will be saved by the shipping industry, can certainly augment business, and traffic in Tuticorin Port and other coastal areas. Hence, it is certainly in the public interest, like the Suez Canal after making which ships coming from Europe did not have to go all around Africa to reach Asian countries.

15. In view of the above, Writ Petition No.33528 of 2004 is dismissed as premature.

16. W.P.No.34436 of 2004 has been filed for a writ of mandamus directing the respondent-District Collectors to have the public hearings completed in accordance with the public hearing notice dated 10.10.200 4 and to send their reports along with the minutes of the public hearing to the Ministry of Environment and Forests, Government of India forthwith. In our opinion this prayer is an appropriate one, and hence we direct that the public hearings as contemplated by IV Schedule to the notification dated 27.01.1994, as amended, be completed expeditiously, if not already completed, and the reports with the minutes be sent to the Ministry of Environment and Forests, Government of India forthwith. We further direct that further action be taken forthwith by the authorities concerned, in accordance with law, so that the Sethu Samudhram Ship Canal Project be completed as expeditiously as possible. With these directions, W.P.No.34436 of 2004 is disposed off.

17.Before parting with the above cases, we would like to mention that we should not obstruct the scientific and technical progress of the country in the name of environment protection. No doubt, the environment has to be protected, but at the same time, we must never overlook the basic aim of our country which is to make India a powerful and modern industrial state. Today the real world is cruel and harsh. It respects power, not poverty or weakness. The truth is that Indians, despite being intelligent and industrious people, are not respected by Westerners, not because our skin is brown or black in colour, but because our country is poor. Nobody respects the poor. When the Chinese and Japanese were poor people they were derisively called 'yellow' races by the Westerners, but today they are industrialized and powerful nations, and now nobody dares to call them that. Similarly, if we

wish to get respect in the world community we must make our country highly industrialized and prosperous. Also, industrialization alone can generate the wealth we require for taking care of the welfare of our people, as is the mandate of the Directive Principles in our Constitution.

18. Nowadays, in seminars, newspaper articles, books etc., the constant refrain is of protecting the environment, and hardly any thought is given about the need for rapid industrialization. Everyone seems to have forgotten the basic goal of our country, that is to make India a modern, powerful, highly industrialized and prosperous country. The implicit message which seems to be conveyed is that the environment must be protected, even if that has to be done by closing down our industries. The impression sought to be created is that there is an imbalance in our country between man and nature because there has been too much industrialization, though the truth is that there has been too little industrialization in India, and not too much. Nobody can dispute the need for protecting the environment. After all, people are entitled to pure air and water, forests have to be protected for ensuring regular rainfall and preventing soil erosion, wildlife has to be protected for maintaining ecological balance, etc. But, what is overlooked is that protection of the environment is incidental to industrialization. In other words, if we industrialise we will be compelled to protect the environment and there is no conflict between industrialization and environment protection. Thus, industrialization itself ensures a good environment. For instance, in Western countries, which are industrialized, the rivers are clean, the air has little pollution, etc., The factories and motor cars in North America and Europe have to be fitted with pollution avoidance devices to meet the high standards of pollution control fixed by the authorities. The forests and wildlife in these countries are carefully preserved by experts scientifically. People in Western countries are fined heavily if they throw litter and garbage on the road or public places, while in our country's cities one can see garbage and litter lying everywhere. Industrialisation not only creates the wealth necessary for preserving and protecting the environment, it also creates the modern mind in which protecting the environment is instilled since childhood. Parents in Western countries teach their children that they must not throw litter anywhere except in the public bins established for this purpose. When one takes a dog for a walk in any Western city, and the dog excretes on the road or park, the owner must pick up the excreta (with a paper or whatever) and throw it in the bin set up for this purpose, otherwise he is fined. Thus, the very mindset of Westerners is towards protection of the environment, and this is because they are highly industrialized. We are not trying to say that we should not care for the environment. We should certainly not let certain unscrupulous businessmen discharge toxic effluents into our rivers or hazardous fumes into the atmosphere. We should not let greedy forest contractors destroy our forests and ecology. We must certainly place restrictions and regulations for protecting the environment. But, at the same time a balance has to be struck. No doubt Article 48-A of the Constitution states that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country" and Article 51A(g) makes it a fundamental duty of all citizens to protect forests, lakes, rivers, wildlife, etc. However, these provisions have to be read along with the basic objective of the country, that is to make India a powerful,

highly industrialized and Modern State. Our main aim must be to rapidly industrialise, and protection of environment must be regarded as only incidental to this main aim, and not itself the main aim. Unless we are industrialized we will never get respect in the comity of nations and will not be able to promote the welfare of our people (because we will not be able to generate the wealth for this purpose) as required by Article 38 of the Constitution. Without industrialization our people shall also not be able to get work, education, unemployment and sickness benefits and other public assistance as required by Article 41 of the Constitution, because all these require huge resources and funds which can only be generated by a high degree of industrialisation. The massive unemployment in our country can also be eradicated by rapid industrialization.

19. Consequently, connected miscellaneous petitions are closed. No costs.

Index: Yes/No
Internet: Yes/No

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Copy to:-

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